



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Macpherson v Spoar, 2024 ONLTB 39930

Date: 2024-06-05

File Number: LTB-L-078526-23

In the matter of: 6471 ASH ST
NIAGARA FALLS ON L2G2H4

Between: John Macpherson

And

Tracy Spoar



Landlord

Tenant

John Macpherson (the 'Landlord') applied for an order to terminate the tenancy and evict Tracy Spoar (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

John Macpherson (the 'Landlord') also applied for an order requiring Tracy Spoar (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on May 21, 2024.

Only the Landlord, J. Macpherson attended the hearing.

As of 10:10 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenant shall pay \$825.80 to the Landlord, which represents the reasonable costs of \$639.80 to replace property that was damaged and cannot be repaired and the cost of filing this application.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On September 11, 2023, the Landlord gave the Tenant an N5 notice of termination deemed served on September 11, 2023.

4. The Landlord's N5 notice alleges that:
 - a. The Tenant pulled up the carpet on the stairs going from the main floor to the upstairs foyer. The Landlord served the Tenant a notice of entry on June 22, 2023 to perform a safety and maintenance inspection of the rental unit. The Landlord attended the rental unit on June 29, 2023 and observed that the carpet had been removed from the staircase by the Tenants.
 - b. The Landlord again attended the rental unit on July 3, 2023 and observed that the Tenant had wilfully or negligently damaged the brick walls at the front of the residential complex.

Landlord's Evidence

5. The Landlord testified at the hearing that he had incurred costs of \$566.20 plus HST in the amount of \$73.60 for a total of \$639.80 which was paid to A-1 Flooring to replace the carpet to the staircase as the Tenant had wilfully removed the carpet due to pet damage caused by the Tenant's pet.
6. The Landlord also testified that the damage to the exterior brick wall of the residential complex was repaired by the Tenant at their own expense. The Landlord did not seek any out-of-pocket expense for the replacement of the brick door.
7. I find that the Tenant voided the portion of the N5 requiring that the Tenant fix the damage to the brick wall.
8. The Landlord also testified that the Tenant abandoned the rental unit, which they discovered on May 6, 2024. I will therefore only consider the damages portions of the Landlord's application.

Analysis

9. Section 89 (1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') states that:

A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or a former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex.

10. Based on the documentary evidence entered by the Landlord, namely the email from the Tenant in which she indicates that she has removed the carpet, I find that the Tenant wilfully removed the carpet from the staircase of the residential complex causing undue damage to the residential complex.
11. Based on the testimony of the Landlord, I find that the Tenant repaired the damage to the brick exterior wall of the residential complex or made arrangements satisfactory to the Landlord. However, as per the Landlord's testimony, the Landlord gave the Tenant 46


days to repair or replace the carpet per his email to the tenant dated June 30, 2023. The Tenant did not repair or replace the carpet and the Landlord incurred costs to replace the carpet in the amount of \$639.80 on September 28, 2023. I find that the Tenant did not repair or replace the unduly damaged carpet caused by the Tenant's wilful conduct.

12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
14. The Landlord has incurred reasonable costs of \$639.80 to replace property that was damaged and cannot be repaired.

It is ordered that:

1. The Tenant shall pay to the Landlord \$639.80, which represents the reasonable costs of replacing the damaged carpet.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenant owes the Landlord is \$825.80.
4. If the Tenant does not pay the Landlord the full amount owing on or before June 16, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 17, 2024 at 7.00% annually on the balance outstanding.

June 5, 2024
Date Issued



Christopher Lin
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.